

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 15.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 8, 2009.

[R09-134]

PREAMBLE

1. Sections Affected

R2-5-105

Rulemaking Action

Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 41-763(2) and (6)

Implementing statute: A.R.S. § 39-128

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:

Notice of Rulemaking Docket Opening: 14 A.A.R. 4669, December 19, 2008

Notice of Rulemaking Docket Opening: 16 A.A.R. 11, January 1, 2010 (*in this issue*)

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Christine Bronson, Employee Relations Manager

Address: ADOA Human Resources
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007

Telephone: (602) 542-1423

Fax: (602) 542-1980

E-mail: Christine.Bronson@azdoa.gov

5. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

R2-5-105 delineates the documents that are to be maintained in an employee's official personnel file, who may have access to the file, and what employee information may be released and to whom it may be released. R2-5-105 is being amended to conform to H.B. 2159, Laws 2008, Ch. 277, which allows disciplinary actions of state employees and employees' responses to disciplinary actions to be open to inspection and copying under Arizona public records law. In addition, in the Department's five-year review report, approved by the Governor's Regulatory Review Council (G.R.R.C.) in September 2006, the Department had indicated this rule would be amended to require that immigration records be kept in a file separate from the employee's official personnel file. Clarifications and housekeeping revisions are also being made along with the specific changes.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review any study and does not propose to rely on or not rely on any study for this rulemaking.

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7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The proposed rulemaking affects state agencies and state employees only and will not have an impact on small businesses and consumers. The financial impact of this rulemaking would include the costs associated with staff hours to retrieve and copy records, review documents prior to release to redact personally identifying information and any other information protected by law, and the proper dissemination of the requested information. Since this is a new requirement imposed on state agencies, the financial impact is difficult to anticipate. Any financial impact or administrative expenses will need to be covered by the affected agency's ordinary operating funds.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Christine Bronson, Employee Relations Manager
Address: ADOA Human Resources
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007
Telephone: (602) 542-1423
Fax: (602) 542-1980
E-mail: Christine.Bronson@azdoa.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rule will be held as follows:

Date: February 3, 2010
Time: 2:00 p.m.
Location: Department of Administration
100 N. 15th Ave., Room 204
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on February 3, 2010.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Any material incorporated by reference and its location in the rule:

None

13. The full text of the rule follows:

TITLE 2. ADMINISTRATION

**CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION**

ARTICLE 1. GENERAL

Section
R2-5-105. Personnel Records

ARTICLE 1. GENERAL

R2-5-105. Personnel Records

- A.** Purpose. An employee's official personnel file is the official record and documentation of the administration of the employee's employment.
- B.** Content. An employee's agency head shall, for each agency employee, maintain an official personnel file which shall contain:
1. A copy of the job application or resume for the employee's current regular position;
 2. A copy of all performance appraisal reports completed as required by R2-5-503;

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3. Personnel action forms that ~~have authorized~~ authorize changes in employment status, position, classification, pay, or leave status;
4. Letters of commendation as established by agency policy;
5. Correspondence concerning:
 - a. ~~disciplinary~~ Disciplinary actions as described in Article 8; and letters of reprimand;
 - b. ~~documents acknowledging~~ Acknowledgments of receipt of ~~letters of~~ reprimand or other disciplinary communications; ~~or ; and~~
 - c. ~~other related employee~~ Employee objections or responses to correspondence described in subsection (B)(5)(a) that are not filed as grievances under Article 7, if the objection or response is received within 30 calendar days of the date of the disciplinary action or letter of reprimand; and
6. Corrective action plans and performance planning documents.
- C. Insurance and medical records. An agency head may maintain Group group insurance enrollment forms may be contained in an employee's official personnel file. An agency head shall maintain ~~All medical records shall be maintained in a separate file that is not part of the employee's official personnel file.~~
- D. Immigration records. An agency head shall retain The I-9 form forms and other documents required by law to prove employment eligibility ~~may be retained in an employee's official personnel file or a separate file; that is not part of the employee's official personnel file.~~
- E. Access. For the purpose of this subsection, an official is an individual who provides identification verifying that the individual is exercising powers and duties on behalf of the chief administrative head of a public body. ~~Access~~ An agency head shall limit access to an employee's official personnel file shall be limited to:
 1. The employee or an individual who has written authorization from the employee to review the personnel file;
 2. Agency personnel designated by the agency head as having a need for the information;
 3. A Department official in the normal line of duty;
 4. An official acting in response to a court order or subpoena;
 5. An official of an agency to which the employee has applied; and
 6. An official of an agency of the federal government, state government, or political subdivision, ~~but only if the agency head of the employing agency deems it access to the file to be appropriate, to a proper function of the official requesting access.~~
- F. Disclosure of information.
 1. Definitions. For the purposes of this subsection:
 - a. "Disciplinary actions" means correspondence concerning disciplinary actions as described in Article 8, and letters of reprimand.
 - b. "Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions" means an official notice of charges of misconduct, the final disciplinary letter, and any responses related to grievances or appeals upholding, amending, or overturning the discipline.
 - c. "Employee responses" means any written documents, submitted and signed by the employee, either:
 - i. In response to an official notice of charges of misconduct;
 - ii. As a formal complaint filed under the provisions of Article 7 of this Chapter to grieve a specific disciplinary action; or
 - iii. As an objection to a specific disciplinary action and contained in the employee's official personnel file under subsection (B)(5).
 2. The Director, or designee, shall ensure that except as provided in subsection (E), only the following information about an employee is provided to any person making a public records request under A.R.S. Title 39, Chapter 1, Article 2.
 - 1-a. Name of employee;
 - 2-b. Date of employment;
 - 3-c. Current and previous ~~class~~ classification titles and dates ~~received of appointment to the classification;~~
 - 4-d. Name and location of current and previous agencies to which the employee has been assigned;
 - 5-e. Current and previous salaries and dates of each change; ~~and~~
 - 6-f. Name of employee's current or last known supervisor; ~~and~~
 - g. Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions, including the employee responses to all disciplinary actions, unless providing this information is contrary to law.
- G. Employee Access access to other files. An employee has the right to access only the employee's official personnel file.
- H. Control.
 1. When an employee moves from one state service agency to another, the losing agency shall forward the employee's official personnel file to the gaining agency within 10 days of the effective date of the move.
 2. When a former employee returns to state service to an agency other than the agency in which the employee was last employed, the gaining agency shall request that the last agency forward the employee's official personnel file. The

last agency shall forward the file within 10 days of the receipt of the request.

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TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 15.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 8, 2009.

[R09-136]

PREAMBLE

1. Sections Affected

R2-5-417
R2-5-903

Rulemaking Action

Amend
Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 41-763(2) and (6)

Implementing statute(s): A.R.S. § 41-783(17)

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 12, January 1, 2010 (*in this issue*)

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Christine Bronson, Employee Relations Manager

Address: ADOA Human Resources
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007

Telephone: (602) 542-1423

Fax: (602) 542-1980

E-mail: Christine.Bronson@azdoa.gov

5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

The Department is initiating this rulemaking to amend the Personnel Rules in order to allow agencies to require covered employees to work reduced hours in the event of a reduction in appropriations for personnel expenses and related benefit costs.

Session laws during two recent special sessions have permitted agency directors to implement reductions in covered employees' work hours to comply with mandated appropriation reductions and authorized the Director of the Department of Administration (ADOA) to prescribe procedures to implement the reductions (Laws 2009, First Special Session, Ch. 3 and Laws 2009, Third Special Session, Ch. 7). The current legislation authorizes a required reduction in hours for fiscal year 2009-2010 and the ADOA Director has implemented a furlough program which became effective October 17, 2009, and continues through fiscal year 2010. However, the authority provided by the current legislation expires at the end of fiscal year 2010. Adoption of a furlough rule would allow agencies to use furloughs as a means of addressing budget reductions beyond the current fiscal year or if funding to pay employees is temporarily suspended, for example, due to the lack of an established federal or state budget.

Adoption of a furlough rule would eliminate the need for R2-5-903, Temporary Reduction in Force, thus, the Department is proposing to repeal this rule. R2-5-903 was adopted in June 1996 as a result of a temporary shutdown of the federal government due to the lack of an established federal budget. However, the need for the rule never materialized and the rule has never been used. The rule requires an agency to calculate retention points for every impacted employee which requires considerable lead time to implement. There are also a number of other issues that make R2-5-903 problematic to implement, such as, requiring employees affected by a temporary reduction in force to be separated instead of being placed on unpaid leave status, and, allowing employees to use compensatory leave when in reality, agencies would not have the funding to pay employees for leave taken.

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Because a furlough is an involuntary leave without pay rather than a separation, the new rule is being added under Article 4, Leave.

- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review any study and does not propose to rely on or not rely on any study for this rulemaking.

- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 8. The preliminary summary of the economic, small business, and consumer impact:**

The proposed rulemaking affects state service employees only and will not have an impact on small businesses and consumers. Any financial impact or administrative expenses will be covered by ordinary operating funds.

- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Christine Bronson, Employee Relations Manager

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100 N. 15th Ave., Suite 261
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Telephone: (602) 542-1423

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E-mail: Christine.Bronson@azdoa.gov

- 10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Tuesday, February 2, 2010

Time: 3:00 p.m.

Location: Department of Administration
100 N. 15th Ave., Room 204
Phoenix, AZ 85007

- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

- 12. Any material incorporated by reference and its location in the rules:**

None

- 13. The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 4. LEAVE

Section

R2-5-417. ~~Repealed~~ Furlough

ARTICLE 9. SEPARATIONS

Section

R2-5-903. ~~Temporary Reduction in Force~~ Repealed

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ARTICLE 4. LEAVE

R2-5-417. ~~Repealed Furlough~~

A. Definition. "Furlough" means the involuntary placement of an employee on leave without pay due to budget reduction or suspension of funding.

B. Use of furlough.

1. The Director shall issue furlough procedures and guidelines.
2. An employee may not be placed on furlough for longer than the limit set in the procedures and guidelines issued by the Director.

ARTICLE 9. SEPARATIONS

R2-5-903. ~~Temporary Reduction in Force Repealed~~

~~A.~~ General

1. ~~When funding necessary to pay employees is suspended or reduced, a temporary reduction in force may be conducted and shall be processed in accordance with the provisions of this Section.~~
2. ~~If funding to pay employees is suspended or reduced, an agency head may request approval from the Director to conduct a temporary reduction in force. The agency head shall submit to the Director the plan and procedure the agency proposes to follow. The plan and procedure shall state:~~
 - a. ~~The reason for the temporary reduction in force;~~
 - b. ~~Each budget program affected;~~
 - c. ~~The classes affected;~~
 - d. ~~The amount of shortfall, total number of employees affected, and name and Fair Labor Standards Act status of each affected employee;~~
 - e. ~~The unit, for example, budget program, class, class series or agency, subject to or affected by the temporary reduction in force and number of employees in the affected unit;~~
 - f. ~~When the agency was notified of the funding suspension or reduction;~~
 - g. ~~Assessment of the impact of a temporary reduction in force on the agency's ability to deliver essential services;~~
 - h. ~~What alternatives have been considered and why they were rejected;~~
 - i. ~~The number of funded, vacant positions within the agency, what efforts the agency has made to place employees in other positions within the agency or other state agencies;~~
 - j. ~~Expected outcome of the proposed action; and~~
 - k. ~~A summary of funding discussions with the Department of Administration Finance Division.~~
3. ~~An agency head shall not initiate or implement a personnel action that will affect the temporary reduction in force after the date of the agency head's request to the Director for a temporary reduction in force except to process a personnel action to accomplish, or to assist in accomplishing, the purpose of the temporary reduction in force. The agency head shall give employees subject to a temporary reduction in force preference for placement in any funded vacant positions within the agency for which they qualify. Preference for placement shall be based upon retention points.~~
4. ~~A temporary reduction in force shall not exceed 30 working days from the date of implementation of the plan. If the agency is advised at any time during the temporary reduction in force is in effect that funding for affected positions will be terminated or permanently reduced, an agency head shall plan and conduct a reduction in force as prescribed by R2-5-902, unless the agency makes other arrangements to delay a reduction in force.~~
5. ~~An agency head shall not approve the use of any paid leave except compensatory leave for an employee who is designated for temporary reduction in force. An approved paid or unpaid leave in progress for an employee who is designated for temporary reduction in force shall be cancelled effective the day that the temporary reduction in force begins. The agency head shall notify the affected employee in writing of the cancellation of the approved leave.~~
6. ~~Pay for time on temporary reduction in force may only be restored to an employee if, and to the extent which, federal or state law specifically authorizes payment.~~
7. ~~An employee affected by a temporary reduction in force pursuant to this Section shall return to work in the same position occupied at the start of the temporary reduction in force if funding is fully restored, sufficient attrition has occurred, or an alternate source of funding becomes available.~~
8. ~~Failure or inability to return to work on the effective date of return may be considered a resignation, result in separation without prejudice, or be cause for dismissal as determined by the agency head consistent with the agency policies, procedures, and guidelines. An employee who is unable to return to work due to a non job related medical condition shall provide to the agency head a written statement from a licensed health care practitioner substantiating the employee's inability to return to work.~~

~~B.~~ Administration. ~~The Director shall administer a temporary reduction in force in the following manner:~~

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1. In an agency affected by a temporary reduction in force, employees shall be separated in the order listed below before any action is taken that affects permanent status employees, providing the separation of these employees will accomplish, or assist in accomplishing, the purpose of the temporary reduction in force:
 - a. Permanent status employees who volunteer for a temporary reduction in force;
 - b. Provisional employees;
 - c. Clerical pool employees;
 - d. Temporary employees;
 - e. Seasonal employees;
 - f. Original probationary employees;
 - g. Limited employees.
2. Retention points shall be used to identify full-time or part-time permanent status employees to be placed on temporary reduction in force based on the employee's relative standing on the retention list. Identification of employees to be placed first on temporary reduction in force shall begin with the employee with the lowest number of retention points.
3. Retention points shall be based on length of state service and performance, calculated in accordance with subsections (C), (D), and (E) below.
4. Employees on promotional probation, detail to special duty, or underfilling a position shall compete for retention in their promotional probation, detail to special duty, or underfill classes.
- C.** Calculation of retention points for length of service:
 1. Each permanent status employee shall be awarded 1 retention point for each year of state service. Service of more than six months shall be counted as one year. Service of six months or less shall not be counted.
 2. Periods of service as a state service employee prior to a resignation or dismissal shall not be counted.
 3. Periods of state service as a provisional, seasonal, temporary, limited, or clerical pool employee shall not be counted.
 4. Periods of military leave with or without pay shall be counted.
 5. Periods of service on mobility assignment shall be counted.
 6. Continuous uninterrupted service in a position prior to its transfer to state service by legislative action or otherwise from a budget unit of the state shall be counted.
- D.** Calculation of retention points for performance. The most recent performance evaluation concluded prior to the date of the request for temporary reduction in force shall be used in determining retention points. If any employee has not had a performance evaluation in the past 12 months, the employee shall be awarded 12 retention points. Retention points for performance shall be awarded as follows:
 1. Each employee having an overall performance evaluation of standard or above shall be awarded 12 retention points;
 2. Each employee having an overall performance evaluation of less than standard shall be awarded 0 retention points.
- E.** Resolution of ties. Ties in total retention points shall be broken in the following manner and order:
 1. Tie shall be broken by the employee with the highest overall performance rating in the class currently held by the employee;
 2. If a tie continues to exist, the tie shall be broken by the employee with the earlier initial state service hire date of record;
 3. If a tie continues to exist, it shall be broken by lot.
- F.** Notice of separation due to temporary reduction in force. The agency shall provide the employee with a written notice of separation as soon as practical after the plan is approved. The notice shall include, at a minimum, the effective date of the separation and the right to request a review of the separation.
- G.** When funding necessary to pay the employee is restored, the temporary reduction in force expires, or the agency head otherwise determines that an employee may be recalled, the agency shall provide the employee written notice.
- H.** Employee request for review. An accelerated review process shall be established for temporary reduction in force. No later than three working days after receipt of a temporary reduction in force notice, an employee may submit to the agency head a written request for a review of the determination resulting in the employee's temporary reduction in force and a proposed resolution. The agency head shall respond to the employee with a final decision within three working days after receipt of the request for a review. The request for review shall not delay implementation of the temporary reduction in force.